Under statutes similar to that in force in Michigan previous to the amendment by Act No. 234, Pub. Acts 1909 (see Comp. Laws 1897, §10181, How. St. §12826) the courts have quite uniformly held that the statute confers a privilege which may be waived by the patient by contract, and is not declaratory of any public policy. *Trull* v. *Modern Woodmen of America,* 12 Idaho 318, 85 Pac. 1081; *Metropolitan Life Ins. Co.* v. *Willis,* 37 Ind. App. 48; *Geare* v. *U. S. Life Ins. Co.* 66 Minn. 91, 68 N. W. 731; *Keller* v. *Home Life Ins. Co.,* 95 Mo. App. 627, 69 S. W. 612; *Modern Woodman of America* v. *Angle,* 127 Mo. App. 94, 104 S. W. 297; *Andreveno* v. *Mutual R. F. L. Ass'n,* 34 Fed. 870; *Fuller* v. *K. of P.,* 129 N. C. 318, 40 S. E. 65; *Western Travelers' Acc. Ass'n.* v. *Munson,* 73 Neb. 858; *Foley* v. *The Royal Arcanum,* 151 N. Y. 196, 45 N. E. 456; WIGMORE, Ev. §2388. Subsequent to the decision of the New York Court in *Foley* v. *The Royal Arcanum, supra,* the section of the Code (Code of Civ. Proc. §834) was amended by amending §836, which made it necessary that the privilege be waived upon a trial or examination. Under this amendment, the New York court held that a previous waiver by contract by the patient was void. *Holden* v. *The Metropolitan Life Ins. Co.,* 165 N. Y. 13, 58 N. E. 771. The decision in the principal case is based upon the amendment to the Michigan statute by Act No. 234, Pub Acts 1909. This provides one and only one instance in which a waiver may be made after the decease of the patient, and applying the familiar rule of statutory construction, "*expressio unius, exclusio alterius,*" the court arrived at the conclusion that a previous express waiver by the patient was void. Since the privilege is entirely statutory, whether or not the right to waive it by express contract exists must depend upon the construction of the particular statute involved.

EXECUTORS AND ADMINISTRATORS—RIGHT TO PURCHASE CLAIMS AGAINST THE ESTATE.—A testator, by his will, made his wife executrix, and directed her to sell the property at the end of five years; after keeping one-third of the proceeds for herself and her heirs she was directed, after payment of certain minor bequests and legacies, to pay over the remainder to the "Swedish Mission Society of Chicago, Ill." as residuary legatee. The residuary legatee was misnamed as it was the intention of the testator that the proceeds should go to "The Swedish Evangelical Mission Covenant in America." At the expiration of the time, the executrix conveyed the property to W., who immediately reconveyed to the executrix. The executrix then paid the minor bequests and legacies, bought the interest of the residuary legatee for $31 and now claims title to the land, although the interest of the residuary legatee was, if valid, worth $4000. *Held,* in an action to quiet title in the plaintiff, who was purchaser of the interests of the heir of the testator, that by an application of the doctrine of equitable conversion, the realty was converted into personalty at the death of the testator; that the residuary legatee was competent to take, and therefore the heirs took nothing by inheritance which could pass to the plaintiff. The executrix having settled the claim of the residuary legatee, concerning which settlement no complaint is made by such legatee, she therefore has the

legal title and the right to possession of the land in controversy. (Three judges dissenting.) *Coyne* v. *Davis,* (Neb. 1915) 154 N. W. 547.

The principal race presents an exceedingly interesting problem and seems to be one of first impression. It must be taken as elementary that an executor cannot profit by speculation in the property of the estate which he represents, because he stands in a fiduciary relation to those taking through the estate and cannot use this position of trust and confidence to make a profit for himself. *Caldwell* v. *Caldwell,* 45 Ohio St. 512, 15 N. E. 297. See on this subject *Tyler et al.* v. *Sanborn,* 128 Ill. 136, 4 L. R. A. 218; *Munson* v. *Syracuse G. & C. Ry. Co.,* 103 N. Y. 75. An exception has been engrafted to this rule: a trustee, or one standing in a fiduciary character such as an executor or an administrator, may, with all parties represented, have leave to purchase, provided there is no fraud or combination of any kind. *Anderson* v. *Butler,* 31 S. C. 183, 5 L. R. A. 166. The purpose of the general rule is not only to prevent the practice of fraud, but also to deprive the one standing in the fiduciary relation of any temptation to commit fraud. *Sypher* v. *McHenry,* 18 Ia. 232; *Mapps* v. *Sharpe,* 32 Ill. 13 (making the rule applicable to mortgagors): *Moore* v. *Moore,* 5 N. Y. 256 (making the rule applicable to agents); *Parmenter* v. *Walker,* 9 R. I. 225. Where this general rule has been violated it is equally well settled that the executor or other fiduciary officer, who has taken advantage of his position can be held to a strict accounting for all profits made by such violation, by those whose interests have been affected. *Davoue* v. *Fanning,* 2 Johns, Ch. 252; see also *Michaud v. Girod,* 45 U. S. (4 How.) 557, 11 L. Ed. 1076, holding to the above principle and severely criticizing those courts which allow a purchase by the executor under any circumstances, whether they be fraudulent or not. But if it be conceded in the principal case that there was an equitable conversion of the testator's realty to personalty from the date of his death under the principles announced in *Boland* v. *Tiernay* 118 Ia. 59, 91 N. W. 836; *Burbach v. Burbach,* 217 Ill. 547, 75 N. E. 519, then the present plaintiffs could not complain, because they have no interest whatever in any dealings between the executrix and the residuary legatee. The purpose of the will and the intention of the testator had been carried out as far as they were concerned. The only person who could complain here was the residuary legatee, and in this suit, since it has allowed judgment to go against it by default, it is forever barred to assert its claim. The result therefore is, that the court is helpless to do otherwise than decree this property to belong to the executrix although it was gained by the grossest kind of fraud. The ground of the dissent, for which no cases are cited as precedents, is simply that the principles of equitable conversion did not apply and should not be allowed to apply to effect such a result as above stated.

GARNISHMENT—DUTY TO GIVE NOTICE AND MAKE DEFENSES.—Plaintiff sued defendant for a debt of $406.20 and defendant seeks a credit of $295.50 paid on a judgment rendered against it, as garnishee, by a justice of the peace in Kansas. In the suit in garnishment, defendant, as garnishee, neither